
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

XLEAR, INC., a Utah corporation, and
JONES BOZEMAN FAMILY LIMITED
PARTNERSHIP,

Plaintiff,

v.

STS Health, LLC, a Virginia Limited
Liability Company,

Defendant.

**MEMORANDUM DECISION AND
ORDER:**

- **DISMISSING [49] DEFENDANT’S
COUNTERCLAIM FOR
FAILURE TO PROSECUTE;**
- **ENTERING DEFAULT AGAINST
DEFENDANT; AND**
- **DIRECTING PLAINTIFF TO
PREPARE AFFIDAVIT AND
PROPOSED ORDER FOR
DEFAULT JUDGMENT**

Case No. 2:14-cv-00806-DN

District Judge David Nuffer

On May 2, 2019, counsel for Defendant was permitted to withdraw via order (the “Previous Order”).¹ Defendant was ordered to retain new counsel and that new counsel was to file an appearance within 21 days of the entry of the order.² Defendant was notified that if it failed to file a notice of appearance of new counsel, Defendant may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to default judgment for Plaintiff and dismissal of Defendant’s counterclaim.³

The 21-day period has expired, and Defendant has failed to comply with the Previous Order. Based on this failure, IT IS HEREBY ORDERED as follows:

¹ Order Granting [87] Motion to Withdraw as Counsel, [docket no. 87](#), filed May 2, 2019.

² *Id.*

³ *Id.*

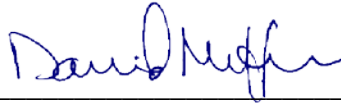
Under the authority of Federal Rule of Civil Procedure 41(b) and (c), Defendant's counterclaim⁴ is DISMISSED with prejudice.

Under the authority of Federal Rule of Civil Procedure 55(a), default is ENTERED against Defendant.

In order to facilitate the entry of default judgment under Federal Rule of Civil Procedure 55(b), Plaintiff is ORDERED to prepare motion for default judgment as well as an affidavit showing the amount due for Plaintiff's claims that can be made certain by computation. Plaintiff is to submit this motion no later than September 24, 2019.

Signed September 12, 2019.

BY THE COURT



David Nuffer
United States District Judge

⁴ Answer, Affirmative Defenses, and Counterclaims to Plaintiff's First Amended Complaint, [docket no. 49](#), filed March 25, 2016.